

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON LOCAL GOVERNMENT**

**Call to Order:** By **CHAIRMAN MIKE SPRAGUE**, on January 12, 1999 at 3:00 P.M., in Room 405 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Mike Sprague, Chairman (R)  
Sen. Ken Miller, Vice Chairman (R)  
Sen. Bill Glaser (R)  
Sen. Don Hargrove (R)  
Sen. John C. Bohlinger (R)  
Sen. Duane Grimes (R)  
Sen. Dale Mahlum (R)  
Sen. Dorothy Eck (D)  
Sen. Jon Tester (D)  
Sen. J.D. Lynch (D)  
Sen. Chris Christiaens (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Mary Vandenbosch, Legislative Branch  
Jodi Pauley, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 95, 1/06/1999; SB 96,  
1/06/1999; SB 97, 1/06/1999  
Executive Action: SB 95 DP

#### **HEARING ON SB 95**

**Sponsor:** SENATOR LORENTS GROSFIELD, SD 13, Big Timber

**Proponents:**

**Jane Jelinski, MACo**

**Steve Snezek, MT Assoc. of Realtors**

**Byron Roberts, MT Building Industry Assoc.**

**Gloria Paladichuk, City of Glendive and Richland Developers**

**Opponents:** None

**Opening Statement by Sponsor:**

**SENATOR LORENTS GROSFIELD, SD 13, Big Timber,** opened on SB 95. He explained the planning that went on during the interim to come up with these bills. The EQC met this last interim and formed a growth study committee and looked at issues concerning subdivisions and the planning process of cities and counties. He said in most instances, planning processes take place during the subdivision proposal. Most counties and towns then have to think about growth and how they are going to manage this. The planning needs to happen before the subdivision comes before the board as subdivision regulations are not the appropriate place to address growth. SB 95 is to authorize counties to voluntarily appropriate and transfer funds to municipalities to supplement the cost of infrastructure development and the cost of maintenance. He said in the town of Big Timber there is a major mine development going on. The city of Big Timber could double because of it. The people that live outside of Big Timber don't want a bunch of 20 acre tracks all over the countryside, they want them in town. The town people are saying they don't have any money or infrastructure ready and they cannot do it. The question being raised is if a county entity can put money into a city's infrastructure. This bill addresses this and counties can put money into such a fund. If communities plan, then there should be some incentives to do development in certain areas. This encourages cooperation between local governments and looks at mutual funding needs.

**Proponents Testimony:**

**Jane Jelinski, MACo,** said that MACo supports this bill and they like the word voluntarily.

**Steve Snezek, MT Assoc. of Realtors,** said they support this bill and also believe the word voluntarily is important to this bill.

**Byron Roberts, MT Building Industry Assoc.,** rose in support of SB 95.

**Gloria Paladichuk, City of Glendive and Richland Co.,** said that Montana and North Dakota shared money on a project to build a bridge and this is a very good bill to share dollars within the county and city.

**{Tape : 1; Side : A; Approx. Time Counter : 3:12 p.m.}**

**Opponents Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**SENATOR GROSFIELD** closed on SB 95.

**EXECUTIVE ACTION ON SB 95**

**Motion/Vote:** SEN. LYNCH moved that SB 95 DO PASS.

Motion passed unanimously 11-0.

**HEARING ON SB 96**

**Sponsor:** SENATOR BARRY "SPOOK" STANG, SD 36, St. Regis

**Proponents:**

**Jerry Sorensen, EQC**

**Mike Kadus, Mayor of Missoula**

**Steve Snezek, Assoc. of Realtors**

**Anne Hedges, MT Environmental Information Center**

**Byron Roberts, MT Building Industry Assoc.**

**Opponents:** None

**Opening Statement by Sponsor:**

**VICKI COCCHIARELLA, SD 32, Missoula** opened for **SENATOR BARRY "SPOOK" STANG,** on SB 96.

**Proponents Testimony:**

**Jerry Sorensen, EQC,** said this bill was drafted as a concern for those communities who are having problems getting new development within their communities. Many cities have old zoning regulations and it is very difficult to get these changed. Currently if 20 percent of the citizens protest a zoning change it can be stopped

and then it requires a 75 percent vote of city council to over-ride and allow for zoning changes. This bill lessens those restrictions and helps with development within city boundaries. Changes within the bill include changing the protest provision to 40 percent of the neighbors and the over-ride of the city council to 60 percent. He submitted a letter of testimony from Nicholas Kaufman. **EXHIBIT(los08a01)**

**Mike Kadus, Mayor of Missoula,** said a 75 percent majority is really hard to overcome. Cities are changing and growing and zoning needs to be able to change. As urban areas spread out, it is critical to add density to the areas that are closer to the core of the city to provide services in an efficient way. This bill is not anti-neighborhood. Currently, just one neighbor can put a stop to growth in the community while the other neighbors may be in support of it. Thus, we end up with a stagnant core rather than trying to create change and allow for our cities to grow. He suggest some changes to the bill. Subsection 2, line 15 where it says it takes three-fifths of all the members of city council, he suggested changing it to the city council members present at the meeting. He said often times there are members gone and if they vote, the absent member's vote count as a no vote and this is not fair. He also said Subsection (a) protects the property owner, subsection (b), (c), and (d) protect the neighbor. He said to eliminate those and have a subsection (b) that read anybody can protest that has property within 150 of the parcel that is involved in a zoning change. Property owners have rights, but the question is how far should we let those rights be and who is it going to affect.

**{Tape : 1; Side : A; Approx. Time Counter : 3:30 p.m.}**

**Steve Snezek, Assoc. of Realtors,** said if they as a community want to prevent urban sprawl they need to encourage in-fill development. This bill makes zone changes easier and if a developer cannot get changes within the city he will go to the county and this only increases urban sprawl.

**Anne Hedges, MT Environmental Information Center,** said this bill still addresses the concern of property owners and will help avoid sprawl. Citizens still have to participate and can protest zones etc. The super majority is still required to get the zone changed.

**Byron Roberts, MT Building Industry Assoc.,** said this bill will encourage urban in-fill and get people living back in cities and make zone changes possible in cities.

Opponents Testimony:

Missoula City Council submitted a letter of opposition.

**EXHIBIT** (los08a02)

Questions from Committee Members and Responses:

**SENATOR DUANE GRIMES** asked during the last year what impact would this bill have had on zoning decisions. **Jerry Sorensen** said an example is if a couple living in Missoula wanted to do some development at a higher density than what the zoning called for in the neighborhood, it would only take two neighbors to protest it and if the super-majority of the Missoula Council didn't pass it, it was voted down. A lot of people who might want to do creative development and attract people to move into town won't go forward because of risk and cost.

**SENATOR GRIMES** asked how this would affect the zoning issues around the state concerning casinos. **Mr. Sorensen** said he didn't know for sure.

**SENATOR GRIMES** asked what kind of concerns were raised with the 150 foot radius. **SENATOR COCCHIARELLA** said these issues have been gone over in interim, extensively, and they don't feel like some of the proposed amendment that Mayor Kadus is addressing should be put in. One example is the three-fifths majority should not be amended. The 150 radius they feel is appropriate.

**SENATOR GRIMES** said he would be interested in the incentives of this bill and how it would affect zoning plans that have happened in the last year and who this is targeted for. Major controversial issues in urban areas would have been changed because of this bill. He asked how would those issues have been different if the 150 foot limit was changed etc. **SENATOR STANG** said SB 97 addressed this in that it won't take effect until the year 2001. Cities like Missoula that already have the existing plan can have time to work on those problems.

**SENATOR CHRIS CHRISTIAENS** asked how this would have affected Helena as they have had some very controversial issues in the past. **Linda Stoll, MT Assoc. of Planners**, said she didn't know for sure but would check with the city of Helena.

**SENATOR CHRISTIAENS** asked about the zoning of casinos. **SEN. GROSFIELD** said he didn't know for sure and if this bill references zoning for casinos or not.

**SENATOR DOROTHY ECK** said she is concerned about (a)-(d) and how these description apply to other situations. If they are changing

something that is standard to local governments, they should know that they are doing this.

**SENATOR BILL GLASER** asked if this bill had been in place would the proposed Claus subdivision in the Billings Heights been easier. **CHAIRMAN SPRAGUE** said the city council was in favor of the outrage that came from the citizens rather than the city council. He said he didn't think this bill would of had any effect on this.

**SENATOR GLASER** said this bill is raising the requirements of the level of protest needed for zoning. It is raising the protest level from 20 to 40 percent.

**SENATOR MAHLUM** used the example of 5 people living in an area and right now it would only take one person to protest a subdivision. Under this bill it would take two.

**SENATOR GRIMES** asked **Rich Weddle, MT Department of Commerce** to clarify some of the questions that they have discussed. **Rich Weddle** said in regard to casinos, this bill would make it easier to get a re-zoning for casinos.

**SENATOR GRIMES** asked what effect would this have had on the development on the hill in Helena. **Mr. Weddle** said that wasn't a zoning issue but a subdivision issue.

**SENATOR GRIMES** asked if the subdivision that happened in the gulch would of been easier under this bill. **Mr. Weddle** said he was not sure, but used the example that in Billings, 24th street was widened and the traffic level increased. There was some residential sights on one side of that and the owners sought a re-zoning. The property owners behind them protested. Because of this protest the city council couldn't get the votes needed. The property owners went to court and sued the city and the city lost.

**CHAIRMAN SPRAGUE** said this bill deals with cities and towns and not counties.

**SENATOR CHRISTIAENS** said with the passage of this bill it would make it easier to place a pre-release center in Helena for example.

**Closing by Sponsor:**

**SENATOR STANG** said the 150 feet is current law and he closed on SB 96.

*{Tape : 1; Side : B; Approx. Time Counter : 3:53 p.m.}*

HEARING ON SB 97

Sponsor: SENATOR BARRY "SPOOK" STANG, SD 36, St. Regis

Proponents:

Jerry Sorensen, EQC  
VICKI COCCHIARELLA, SD 32, Missoula  
Steve Snezek, Assoc. of Realtors  
Linda Stoll, MT Assoc. of Planners  
Jane Jelinski, MACo  
Gavin Anderson, Department of Commerce  
Jani McCall, City of Billings  
Bob Horne, MT Assoc. of Planners  
Janet Ellis, MT Audubon  
Anne Hedges, MT Environmental Information Center  
Craig Sweet, MontPIRG  
Byron Roberts, MT Building Industry Assoc  
Denise Roth Barber, MT Sierra Club

Opponents:

Virginia Mueller, MT Assoc. of Registered Land Surveyors

Opening Statement by Sponsor:

SENATOR BARRY "SPOOK" STANG, SD 36, St. Regis opened on SB 97.  
**EXHIBIT**(los08a03)

Proponents Testimony:

Jerry Sorensen, EQC, spoke in favor of SB 97. **EXHIBIT**(los08a04)

VICKI COCCHIARELLA, SD 32, Missoula, said the EQC is a bipartisan committee and they have spent hundreds of hours during the interim working on this. This issue which deals with growth and cities losing population was brought to them by the citizens of the state. She said this bill has no repealers, they are a list of amended sections that are in this bill. They tried to implement a growth policy which allows small counties, growing counties, etc., to have a mechanism to deal with fair issue locally and provide incentives to encourage counties to have a growth policy. It also makes sure that these decision of what counties want their areas to look like is not a subdivision fight and when a subdivision happens it will be predictable and part of the plan.

**Steve Snezek, Assoc. of Realtors**, said changing the terminology from master plan to growth policy is a positive change. Master plan can have some negative connotations with it, while growth policy implies a community solution to a community question. Land owners should have an expectation about what he or she can do with their land. The planning and zoning process is the proper place to have input on those land owner decisions.

**Linda Stoll, MT Assoc. of Planners**, said it is not in the best interest of Montana to plan for growth one subdivision at a time. SB 97 takes the planning focus off of the subdivision review process and more in the planning of Montana communities. This bill should lead to more predictability and local decision making. By using a collaborative approach between local governments and development communities it is a positive step toward well planned growth.

**Jane Jelinski, MACo**, stood in support of SB 97. She provided testimony from Stillwater Co. **EXHIBIT(los08a05)**

**Gavin Anderson, Department of Commerce**, rose in support of SB 97.

**Jani McCall, City of Billings**, submitted a letter of testimony from the City-County Planning Dept. in Billings.  
**EXHIBIT(los08a06)**

**Bob Horne, MT Assoc. of Planners**, said a number of Montana communities are trying to manage growth subdivisions in the absence of an overall community based growth policy. This bill provides incentives for communities to engage in long range planning.

**Janet Ellis, MT Audubon**, submitted testimony in support of SB 97.  
**EXHIBIT(los08a07)**

**Anne Hedges, MT Environmental Information Center**, stood in support of SB 97. **EXHIBIT(los08a08)**

**Craig Sweet, MontPIRG**, supported SB 97. **EXHIBIT(los08a09)**

**Byron Roberts, MT Building Industry Assoc.**, said this bill would help in planning for affordable housing.

**Denise Roth Barber, MT Sierra Club**, said land use planning has become a high priority for their members. Planning is very important for the preservation of open space and agricultural land.



**{Tape : 1; Side : B; Approx. Time Counter : 4:17 p.m.}**

**Opponents Testimony:**

**Virginia Mueller, MT Assoc. Registered Land Surveyors**, said the summary for minor subdivisions is not going to be simplified and this needs to be worked on. She said if a sub-divider has complied with everything there should be no problem in getting something through. When working with the county governments if they do not like a subdivision, they will find a way to make sure it doesn't take place. She passed out testimony from Denis Applebury. **EXHIBIT(1os08a10)**

**Questions from Committee Members and Responses:**

**SENATOR HARGROVE** asked how many counties in the state now have master plans and comply with this bill. **Gavin Anderson** said no counties would comply 100 percent with this bill.

**SENATOR HARGROVE** asked how many counties have a plan at all.

**SENATOR CHOCCHIARELLA** said Big Horn, Madison, Flathead, Missoula, and Stillwater have plans 1-4 years old. Plans that are 5-9 years old are Gallatin, Jefferson, Lewis and Clark, and Yellowstone. Plans that are 10-14 years old is Lake Co. **Mr. Anderson** said in reality probably all counties have a master plan. When HUD was involved, they all adopted comprehensive plans but most are not up to date.

**SENATOR HARGROVE** asked if counties would have to have a plan in accordance with this piece of legislation. **Mr. Anderson** said counties would have to meet those minimum requirements if they implement zoning or exemption for major subdivisions.

**SENATOR HARGROVE** asked if this bill only concerns zoning and does a master plan include the entire county. **Mr. Anderson** said yes, the master plan would have to include the entire county. It is not mandatory to adopt this piece of legislation, unless they implement zoning.

**SENATOR GRIMES** asked if current master plans qualify as growth plans. **SENATOR COCCHIARELLA** said yes to a point. The language on page six was put in so that if someone has a master plan in place it is the same as a growth policy.

**SENATOR GRIMES** asked if the reason for putting in the neighborhood plan is to exclude those county plans that don't encompass the whole county from being a growth policy plan. For instance Jefferson Co. went through a planning process for the north end of the county and will they have to go through that

again. **SENATOR COCCHIARELLA** said this is why that language was put in there and if they are in that transition then it is recognized. It doesn't just deal with the county but all plans.

**SENATOR GRIMES** asked if a county has gone through the planning process already and then a new sub-division comes before the planning commission, would they qualify for the minor subdivision rule. **SENATOR COCCHIARELLA** said if the planner had placed that as one of the incentives and public interest had been met in the planning process, a minor would not have to have the review. She said the purpose of this bill is to get rid of fights over subdivisions.

*{Tape : 1; Side : B; Approx. Time Counter : 4:29 p.m.}*

**SENATOR MAHLUM** said they have a developer that has a small development in Ravalli Co. and a small development in Missoula Co.. Does the developer have to worry about the planning commission in both Missoula and Ravalli Co., or can he do it all at once. **SENATOR COCCHIARELLA** said if the plan is adopted and in place it will provide predictability.

**SENATOR MAHLUM** asked if there would be some problems with local communities saying that they don't like what the state is making them do. **SENATOR COCCHIARELLA** said then the incentives won't be there.

**SENATOR MILLER** asked what about the funding. **SENATOR COCCHIARELLA** said this bill will stand alone without the incentives of more funding.

**SENATOR MILLER** asked if this bill is a mandate on local governments. **SENATOR COCCHIARELLA** said this is not a mandatory bill at all. If counties don't do planning, then they don't receive the incentives. Counties are crying, saying they would like to make planning easier and have a reason to do planning.

**SENATOR GRIMES** said there are currently counties who have regulations on review and approvals, but because they don't have a growth policy then those counties would have to go back and establish growth policies before having the expedited review. **SENATOR COCCHIARELLA** said yes.

**SENATOR GRIMES** asked if this legislation would grandfather in subdivisions that are currently in process. **SENATOR COCCHIARELLA** said yes this was one of the proposed amendments for the committee to adopt.

**CHAIRMAN SPRAGUE** asked what was **Virginia Mueller's** objection to this bill. **Virginia Mueller** said if a county does not have a growth plan there is no longer a minor subdivision review. The counties cannot afford this and are being punished because they don't get this money.

**CHAIRMAN SPRAGUE** asked what does she recommend. **Virginia Mueller** said that if county can't afford a growth plan or can't participate then they shouldn't be deprived of what they have now.

**CHAIRMAN SPRAGUE** asked how would the sponsor react to this.

**SENATOR COCCHIARELLA** said this bill takes away nothing that is in place right now. It is an enhancement to present law for counties and cities to adopt a plan.

**Closing by Sponsor:**

**SENATOR STANG** said this committee went around the state to get input on these proposals. This committee was made up of legislators and people of varying interests to make sure this bill was a good piece of legislation. It answers the land surveyors questions and makes it an easier process because it is not required by local governments and takes out the problems that arise in subdivisions. The funding is not the most important part of this bill and it does not have to come from the state. There is funding available from private intuitions to donate to planning boards, etc. He said there is a saving clause in this to make sure nothing in existence will be shut out of the process. He passed out amendments. **EXHIBIT(1os08a11)**

**ADJOURNMENT**

Adjournment: 4:42 P.M.

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SEN. MIKE SPRAGUE, Chairman

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JODI PAULEY, Secretary

MS/JP

**EXHIBIT** (los08aad)